

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

ORIGINAL

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JAN 22 1996

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. _____
Table of Allotments,) RM- _____
FM Broadcast Stations)
(Mooreland and Woodward,)
Oklahoma))

To: The Chief, Allocations Branch

DOCKET FILE COPY ORIGINAL

PETITION FOR RULE MAKING

FM 92 Broadcasters, Inc. ("FM 92"), by its attorneys and pursuant to Sections 1.401 and 73.3573 of the Commission's rules, hereby petitions the Commission to issue a Notice of Proposed Rule Making to amend Section 73.202(b), Table of Allotments, FM Broadcast Stations, to reallocate Channel 261C1 from Woodward, Oklahoma to Mooreland, Oklahoma. As discussed below, the allotment of Channel 261C1 to Mooreland would further the Commission's goal of providing the community with its first local service. FM 92 intends to promptly apply for Channel 261C1 if it is allotted to Mooreland and promptly build the station if its application is granted.

BACKGROUND

1. In 1991, Fuchs Communications, Inc. ("Fuchs"), licensee of KWFX(FM), Woodward, Oklahoma, requested and was granted authority to upgrade its station from Channel 228A to Channel 261C1 in Woodward. See FCC File No. BPH-911220IE. However, on August 8, 1994, Fuchs filed a letter with the Commission requesting cancellation of its construction permit to upgrade its facilities and dismissal of its application for additional time to complete the upgrade. The Commission subsequently canceled the construction permit and dismissed the

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application. See FCC Reference No. 1800B3-KEF (September 2, 1994). Channel 261C1 at Woodward remains vacant.

2. Generally, Section 307(b) of the Communications Act, as amended, requires that channel allotments be made to communities with geographically identifiable population groupings. Mooreland, Oklahoma easily qualifies as a community for allotment purposes. See Revision of FM Assignment Policies and Procedures, Second Report and Order ("FM Assignments"), BC Docket No. 80-130, 90 FCC 2d 88, 101 (1982) (noting that if a community is incorporated or listed in the U.S. Census, it qualifies as an independent community for allotment purposes).

3. Mooreland is an incorporated community of 1,157 residents and is located in Woodward County, which has a total population of 18,796, according to the 1990 U.S. Census. Mooreland has its own town government, which includes a mayor, vice-mayor, three trustees, clerk, treasurer, town administrator, auditor, attorney, building inspector, and utility foreman. Mooreland has 17 volunteer fire personnel and two full-time police officers. Mooreland has its own tax collection system, court system, water treatment system, electric system, and school system, which offers a complete primary and secondary education. Mooreland has dozens of retail, wholesale, and service-related businesses, including two tax offices, a bank, a telephone company, a large grocery store, a hardware and auto supply store, body shops, beauty shops, gift shops, restaurants, convenience stores, a farmer's co-op, a realty company, a motel, a nursing home, a funeral home, an attorney, a dentist, doctors, electricians, plumbers, mechanics, and building contractors. Mooreland also has a noncommercial airport and its own weekly newspaper. There are a half dozen churches located in the community. Finally, Mooreland is

situated along heavily traveled U.S. 412, which intersects highways U.S. 281 and U.S. 183/270 not far from Mooreland.

DISCUSSION

4. The Commission has long held that providing a community with its first local service is one of the top priorities of its FM allotment policy. FM Assignments, 90 FCC 2d 88, 92.

Mooreland has no local FM service despite the fact that it clearly qualifies as a community for allotment purposes, as detailed above. Woodward, on the other hand, has five FM channels allotted to its community. Channel 261C1 in Woodward has laid fallow since it was allotted to the community five years ago, as discussed above. The reallocation of Channel 261C1 from Woodward -- a community that is not utilizing the channel -- to Mooreland would further the Commission's FM allotment policy goal of providing a first local service to Mooreland.

5. In addition to furthering the Commission's FM allotment priorities, the allotment of Channel 261C1 to Mooreland is consistent with the Commission's rules regarding spacing among FM broadcast stations. As demonstrated in the attached Engineering Statement, the allotment of Channel 261C1 to Mooreland would not create short-spacing problems with any of the relevant Oklahoma, Kansas, or Texas radio stations.

6. FM 92 has demonstrated that: (1) Mooreland is a community for allotment purposes; (2) the reallocation of Channel 261C1 from Woodward to Mooreland would remove a channel that has laid fallow for five years from a community that already has several radio stations to a community that has no local service; (3) the allotment of Channel 261C1 to Mooreland would further the Commission's important priority of providing a first local service to a community; and (4) the allotment would not violate the Commission's minimum-spacing requirements

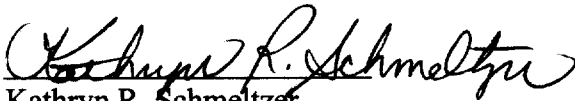
among FM broadcast stations. Finally, FM 92 pledges to promptly apply for Channel 261C1 if it is allotted to Mooreland and promptly build the station if its application is granted.

CONCLUSION

WHEREFORE, the premises considered, FM 92 Broadcasters, Inc. respectfully requests the Commission to issue a Notice of Proposed Rule Making to amend Section 73.202(b), Table of Allotments, FM Broadcast Stations, to reallocate Channel 261C1 from Woodward, Oklahoma to Mooreland, Oklahoma.

Respectfully submitted,

FM 92 BROADCASTERS, INC.

By: 
Kathryn R. Schmeltzer
Kevin M. Walsh

Its Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA, L.L.P.
2001 Pennsylvania Avenue, NW
Suite 400
Washington, DC 20006
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January 22, 1996

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SELLMEYER ENGINEERING
BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS
P. O. Box 356 McKinney, Texas 75069
MEMBER AFCCE
(214) 542-2056

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ENGINEERING STATEMENT IN SUPPORT OF

PETITION FOR RULEMAKING

TO AMEND SECTION 73.202(b) OF THE RULES

MOORELAND, OKLAHOMA

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JANUARY, 1996

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ENGINEERING STATEMENT IN SUPPORT OF
PETITION FOR RULEMAKING
TO AMEND SECTION 73.202(b) OF THE RULES
MOORELAND, OKLAHOMA
JANUARY, 1996

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This Firm has been retained by FM 92 Broadcasters, Inc. to prepare this Engineering Statement in support of its Petition for Rulemaking to add FM Broadcast Channel 261C1 to the Table of Allotments, Section 73.202(b) of the Rules at Mooreland, Oklahoma.

PROPOSED CHANNEL

A frequency search was conducted of all channels in the non-reserved portion of the FM band to determine a suitable channel for allotment at Mooreland, Oklahoma. Channel 261C1 will provide wide area service to Northwestern Oklahoma from a special reference point approximately 10 kilometers southwest of the Mooreland reference point. The Special Reference Point is located at:

N.L.: 36° 26' 21"
W.L.: 99° 12' 16"

A spacing study at this location appears herein as Exhibit 1.

A map showing the area in which to locate the proposed transmitter site appears herein as Exhibit 2. Sufficient area is available in which to locate a tower of suitable height to fully realize the potential coverage of this proposed allotment.

PROPOSED CITY

Mooreland, Oklahoma is an incorporated town under the laws of Oklahoma, located in Woodward County, Oklahoma. The community presently has no local service. The addition of Channel 261C1 will provide a first local service to this Community.

STATUS OF PROPOSED CHANNEL

The proposed channel was originally allotted to the nearby community of Woodward, Oklahoma in Docket 90-286 and reserved for Station KWFY which is presently assigned to Channel 228A. Subsequent to the allotment of Channel 261C1 as a substitute for Channel 228A, Fuchs Communications, Inc. applied for and was eventually issued a construction permit, file number BPH-911220IE, authorizing an upgrade of the KWFY facilities to Channel 266C1. On August 8, 1994, Fuchs Communications, Inc. submitted a letter to the Commission requesting cancellation of its

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construction permit, file number BPH-911220IE and its application for additional time to construct facilities, file number BMPH-940422JC. The Commission Staff by letter 1800B3-KEF dated September 2, 1994 cancelled both the construction permit and the application requesting additional time to construct the authorized facilities. A copy of this letter is included as Exhibit 3.

Under Commission Policy, the allotment is now available for use in another community. FM 92 Broadcasters, Inc. hereby requests the Commission to amend Section 72.207 as follows:

PRESENT AND PROPOSED ALLOTMENTS

WOODWARD, OKLAHOMA

PRESENT

221C3, 228A, 240A, 261C1, 266C, 272A

WOODWARD, OKLAHOMA

PROPOSED

221C3, 228A, 240A, 266C, 272A

MOORELAND, OKLAHOMA

PROPOSED

261C1

INTENT TO APPLY FOR FACILITY

FM 92 Broadcasters, Inc. will apply for and promptly construct facilities for Channel 261C1 at Mooreland, Oklahoma, if granted by the Federal Communications Commission.

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EXHIBIT-1
FM 92 BROADCASTERS, INC.
FM SPACING STUDY

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01-12-1996                      Sellmeyer Engineering                      PAGE 1

FM Study for: NEW                FCC Database Date: 12/95                36-22-05
Location: MOORELAND, OK          Channel Class: C1                99-16-21
Call City, State                 Chan Class Freq kW Latitude Dist. Required
Status Proponent                 File Number HAAT Longitude Azm. Clear (km)
=====
>>>>>>> Study For Channel 261 100.1 MHz <<<<<<<<

ALLOC WOODWARD, OK                261 C1 100.1                36-20-40 25.8 245
VAC                               Docket-90-286                0 99-28-00 246.0 -219.2 SHORT
Site restricted-Effective 12-24-90-Reserved for KWFJ Per D90-286

KTCM KINGMAN, KS                 262 C2 100.3 48. 37-29-59 159.25 158
LIC BLISS COMMUNICATIONS,        BLH-891010KE 154 98-10-24 37.6 +1.25 CLOSE

KIXR PONCA CITY, OK             261 A 100.1 3.00 36-47-19 204.5 200
LIC MUR-THOM BROADCASTING        BLH-840814BY 91 97-02-53 76.1 +4.5 CLOSE

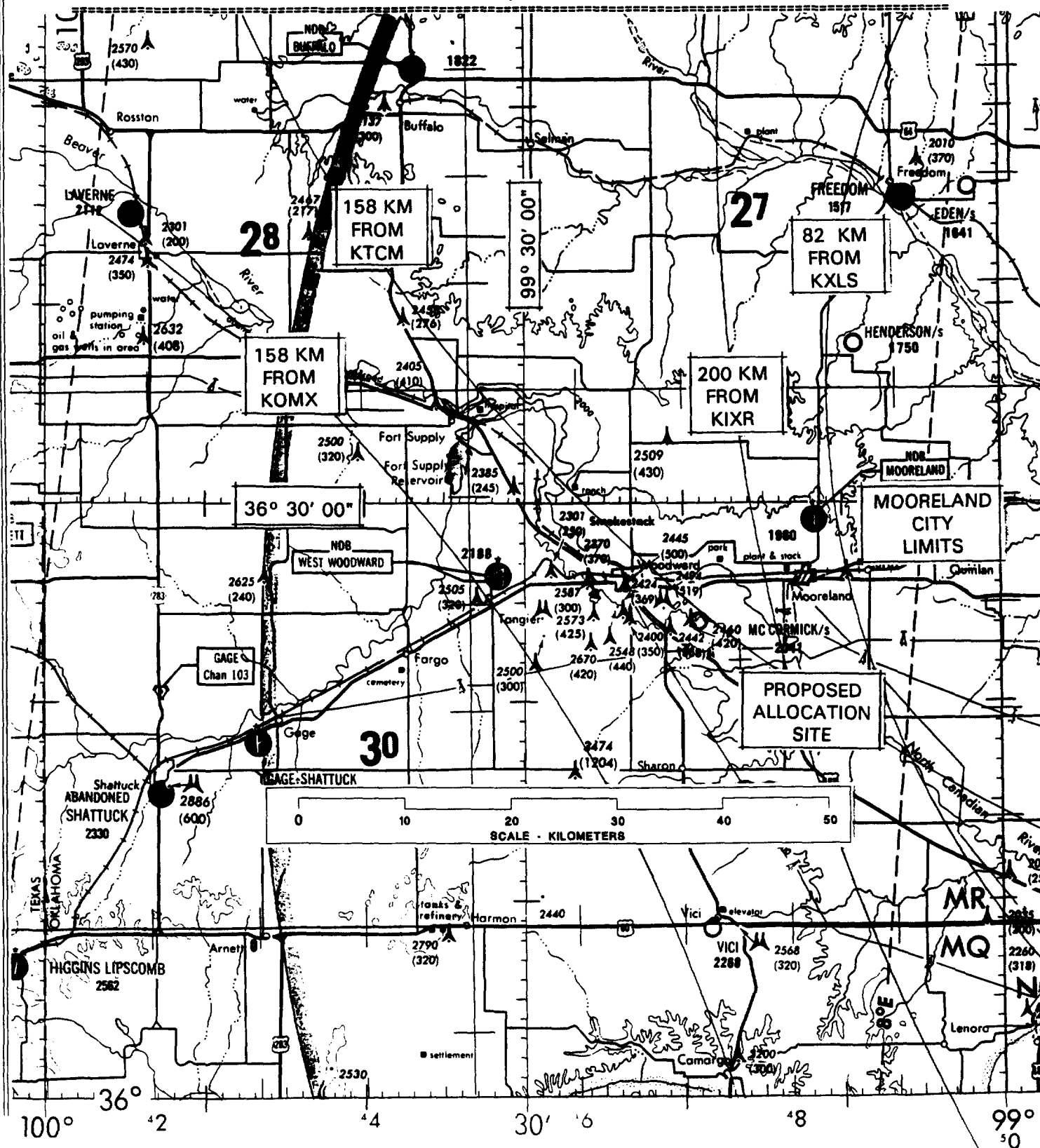
KXLS ALVA, OK                   259 C1 99.7 100. 36-35-41 94.1 82
LIC LESSO, INC.                  BLH-810320AE 256 98-15-38 74.2 +12.1 CLOSE

KOMX PAMPA, TX                  262 C2 100.3 32. 35-34-39 175.1 158
LIC PAMPA BROADCASTERS,          BLH-810519AB 88 100-57-08 240.4 +17.1 CLEAR

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EXHIBIT-2
 FM 92 BROADCASTERS, INC.
 MAP SHOWING PROPOSED ALLOCATION SITE
 AND AREA TO LOCATE
 CHANNEL 261C1
 MOORELAND, OKLAHOMA



SELLMEYER ENGINEERING
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P. O. Box 366 McKinney, Texas 75069
MEMBER AFCCE
(214) 542-2056

EXHIBIT-3
FM 92 BROADCASTERS, INC.
FCC LETTER NOTING CANCELLATION OF
CONSTRUCTION PERMIT FOR STATION KWFX

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FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

SEP 9 10 07 AM '94

SEP 02 1994

IN REPLY REFER TO:
1800B3-KEH

DISPATCHED BY

A. R. Fuchs, Secretary
Fuchs Communications, Inc.
P. O. Box 1246
Woodward, Oklahoma 73802

In re: KWFX(FM), Woodward, Oklahoma
BMPH-940422JC
Application requesting
additional time to construct

Dear Secretary Fuchs:

This letter is in reference to the above-captioned application and your letter of August 8, 1994 requesting that the subject construction permit, File No. BPH-911220IE be cancelled.

Accordingly, pursuant to your request, the request to authorize additional time to construct (File No. BMPH-940422JC) IS HEREBY DISMISSED, and construction permit File No. BPH-911220IE IS HEREBY DECLARED FORFEITED AND CANCELLED.

Sincerely,

Dennis Williams
Chief, FM Branch
Audio Services Division
Mass Media Bureau

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CERTIFICATION OF ENGINEER

I hereby state that:

I am President of Sellmeyer Engineering

The Firm of Sellmeyer Engineering has been retained by FM 92 Broadcasters, Inc. to prepare this Engineering Exhibit

I am a graduate of Arizona State University with the degree of Bachelor of Science in Engineering

I am a Registered Professional Engineer in the States of Ohio and Texas

My qualifications as an Engineer are a matter of record with the Federal Communications Commission, having been previously accepted in applications of this type

This Engineering Exhibit was prepared by me personally or under my direct supervision, and

All facts stated herein are true and correct to the best of my knowledge and belief.


J. S. Sellmeyer, P. E.

January 13, 1996

P. O. Box 356
McKinney, Texas 75069
214-542-2056



CERTIFICATE OF SERVICE

I, Ana Julissa Ayala, do hereby certify that I have this 22nd day of January, 1996, hand delivered a copy of the foregoing "**Petition for Rule Making**" to:

John A. Karousos
Chief
Allocations Branch
Federal Communications Commission
2000 M Street N.W.
5th Floor
Washington, D.C. 20554


Ana Julissa Ayala